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CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, INCLUDING THE ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION

Comparative summary of existing communications and inquiry procedures and practices under international human rights instruments and under the Charter of the United Nations

Report of the Secretary-General

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INTRODUCTION

1. The Commission on the Status of Women, in its resolution 40/8 of 22 March 1996 on the elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, requested the Secretary-General to provide to the Commission on the Status of Women at its forty-first session a comparative summary of existing communications and inquiry procedures and practices under international human rights instruments and under the Charter of the United Nations (E/1996/26, chap. I, sect. C). The present report is submitted in accordance with that request.

2. In the same resolution, the Commission requested the Secretary-General to invite Governments and intergovernmental and non-governmental organizations to submit additional views on an optional protocol to the Convention, taking into account the elements contained in suggestion 7, adopted by the Committee on the Elimination of Discrimination against Women at its fourteenth session, as well as the deliberations of the in-session open-ended working group of the Commission. It requested the Secretary-General to submit to the Commission on the Status of Women at its forty-first session a comprehensive report, including a synthesis of the views requested above. The report of the Secretary-General concerning the views expressed will be before the Commission in document E/CN.6/1997/5.

3. The goal of the full and effective implementation of international obligations in the field of human rights is to enhance the enjoyment of human rights and fundamental freedoms at the national level. Over the past 50 years, a wide array of bodies, mechanisms and procedures have been developed and established by the United Nations human rights system for the purpose of strengthening such national implementation. Whether established to address issues of a general or of a very particular concern, together they afford formal protection covering an extensive body of international human rights standards and norms. As human rights and fundamental freedoms are inherent in the human person, they, as well as the procedures for their protection and promotion, apply to all human beings, women and men alike. At the same time, the international community has found it desirable to adopt a number of specific instruments which address, in a comprehensive manner, women's equality with men and non-discrimination.

4. More recently, increasing attention has been given to efforts to enable women to make more effective use of existing implementation procedures, as well as to develop new procedures to ensure to women the equal enjoyment of their human rights and fundamental freedoms. In that regard, both the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights and the Platform for Action adopted at the Fourth World Conference on Women envisage the possibility of introducing a right to petition under the Convention on the Elimination of All Forms of Discrimination against Women[1] in order to remedy women's unequal use of, or access to, existing procedures. An apparent lack of awareness of the gender dimensions of human rights by existing mechanisms and procedures has also been noted.[2] A right to petition under the Women's Convention has thus come to be seen as one means for rectifying this

situation. At the same time, the need for mainstreaming a gender perspective in all human rights activities of the United Nations is recognized.[3]

5. Perhaps the most basic distinction among international implementation procedures is the source of their existence. That source can be either a treaty or the Charter of the United Nations itself.

6. Treaty-based procedures are based on a treaty covering international human rights law. They are operative only with respect to States that are party to these legal instruments. Through ratification, States ipso facto accept to cooperate in good faith with any control mechanisms established by such a treaty.

7. The most commonly applied and accepted human rights supervisory procedure is the treaty-based reporting system.[4] This is characterized by the following common elements: the reporting obligations are spelled out in treaty provisions; States parties to a human rights treaty also accept the obligation of reporting; the periodicity of reporting is established; independent expert bodies are created to examine the reports of States parties; the terms of reference of the supervisory body are defined in the treaty; and compliance with treaty provisions is monitored through a constructive dialogue between the expert body and the State party. While the content for such reports is outlined in very general terms in the treaties themselves, each of the human rights treaty bodies has adopted general guidelines regarding the form and content of reports. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 1 (1989) also elaborated the objectives that are served by the process of preparation and submission of reports.[5]

8. In addition to the reporting system, several international human rights instruments establish procedures allowing individuals and/or groups to submit communications alleging violations of rights protected under that instrument. Furthermore, one international instrument currently in force authorizes the expert body to initiate inquiries into situations that might represent a violation of the treaty. These treaty-based communications and inquiry procedures are summarized in section I below.

9. Charter-based procedures, on the other hand, are based on a decision, usually in the form of a resolution, of a policy organ which is a representative body reflective of the membership of the United Nations. The legal basis for these mechanisms is thus the Charter of the United Nations, and in particular Article 1, and Article 56 in conjunction with Article 55. Over the years, such mechanisms have been created primarily by the Commission on Human Rights or, on its recommendation, by the Economic and Social Council. They include a number of ad hoc or non-conventional entities, such as the establishment of working groups or the appointment of special rapporteurs, representatives, independent experts or other groups or individuals to investigate human rights situations in particular countries or areas, or on particular themes. The mandate and terms of reference of such procedures and mechanisms are, in general, contained in a resolution of the Commission on Human Rights[6] and/or in a resolution or decision of the Council.

10. Beyond these mechanisms, both the Commission on the Status of Women and the Commission on Human Rights have had for many years specific procedures for handling communications concerning human rights. These two Charter-based procedures are summarized in section II below.

I. TREATY-BASED PROCEDURES

11. The reporting procedure forms an integral part of the obligations assumed by a State party upon ratification of, or accession to, international human rights treaties.[7] The same cannot be said for the individual communications procedures established under some of those same instruments. Existing communications procedures, whether established in a separate optional protocol or contained in the treaty itself, require an additional specific act of ratification or declaration by a State party recognizing the competence of the expert body to receive and consider communications. While the reporting procedure provides a forum for a constructive dialogue between a State party and an independent group of experts to monitor, in a non-adversarial manner, overall compliance with international treaty obligations based on a report submitted by the State party, an individual communications procedure provides the possibility for redress in specific cases.

A. Treaty-based communications procedures

12. At present, four major United Nations human rights treaties provide for the competence of the supervisory body to receive and consider communications alleging violations of rights protected by the respective instrument. These are: the International Covenant on Civil and Political Rights (ICCPR) in its first Optional Protocol (OP), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in its article 14, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) in its article 22, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) in its article 77. Although the Migrant Workers Convention has not yet entered into force, a discussion of the provisions of its article 77 on the right to petition is included in the present comparative summary.

13. In accordance with the optional nature of these procedures, a State party to the main instrument has the option, through a separate act of ratification or declaration, to recognize the competence of the treaty body to receive and consider communications from individuals or groups. Compared with the number of overall ratifications to the main instrument, at present a smaller number of States have ratified the first Optional Protocol to ICCPR or recognized the competence of the expert body to receive such communications under CAT and CERD.

14. The status of ratification/acceptance as of 1 September 1996 is as follows:

ICCPR:	135	CERD:	148	CAT:	99
OP:	89	Article 14:	23	Article 22:	36

15. The Convention against Torture is currently the only international human rights instrument which also has an inquiry procedure. Contrary to the communications procedure of article 22 which requires ratification by the State party to establish the competence of the treaty body to receive and consider communications, a State party may, at the time of ratification of the Convention itself, declare that it does not recognize the competence of the Committee to conduct such an inquiry as provided for under article 20 of the Convention (the so-called "opt out" provision). If no such declaration of non-recognition has been made, the Committee may initiate the inquiry procedure if it receives information indicating that torture is being systematically practised in the territory of a State party.

16. In substantive terms, communications procedures available under international human rights instruments cover the rights set forth in the individual instrument. According to the general non-discrimination clause of article 2.1 of ICCPR, States parties are under the obligation to respect and ensure the rights set forth in the Covenant to all individuals, without distinction on a number of grounds, including sex. Consequently, the first Optional Protocol provides an opportunity for both women and men to submit communications on alleged violations of their rights protected under the Covenant. Although neither CERD nor CAT mention specifically that the rights covered in them extend without distinction on the basis of sex, their applicability to both women and men is without doubt.

17. The Committee on Economic, Social and Cultural Rights has been considering the preparation of an optional protocol to the Covenant since 1991. The Committee held a day of general discussion on an optional protocol during its fourteenth session, in May 1996, and considered the matter further at its fifteenth session, in November/December 1996, with a view to submitting a recommendation concerning an optional protocol on a right to petition to the Commission on Human Rights at its fifty-third session.

18. In the following section, the individual communications procedures under ICCPR, CERD, CAT and MWC are summarized. This is followed by a summary of the inquiry procedure under CAT. The treaty bodies have adopted their own rules of procedure in accordance with their respective instruments, further detailing their methods of work. Except for MWC, which has not yet entered into force and with respect to which there are as yet no rules of procedure, the rules of procedure of the treaty bodies are referred to, as appropriate, in the summary.

1. Admissibility criteria

19. The first stage after a communication is submitted to a treaty body is the determination of its admissibility. Each of the procedures under review contain a number of formal admissibility criteria which must be fulfilled in order to enable the expert body to receive and consider a communication. If any of these criteria is not met or remedied, a communication is declared inadmissible on procedural grounds and no consideration of the merits occurs. The admissibility criteria are contained largely in articles 1, 2, 3 and 5.2 of OP; articles 14.1, 14.6 (a) and 14.7 (a) of CERD; articles 22.1, 22.2 and 22.5 of CAT; and articles 77.1, 77.2 and 77.3 of MWC.

(a) Requirement of ratification or declaration of acceptance

20. A first criterion which determines whether a communication may be received by a treaty body is the requirement that a State party to the instrument has ratified or acceded to the first Optional Protocol, or declared that it recognizes the competence of the treaty body to receive and consider communications.[8] Thus, the communications procedures are strictly optional and are applicable only to States parties which have expressly accepted them by way of ratification/accession, or a declaration. All instruments specify that no communication shall be received by the treaty body if it concerns a State party which is not a party to the first Optional Protocol, or which has not made a declaration accepting the treaty body's competence to receive and consider communications.[9] The ratification of the first Optional Protocol or declaration of acceptance by a State party may occur at any time, either at the time of ratification of the treaty or at any time thereafter.

21. The number of ratifications/accessions, or declarations of acceptance required for entry into force varies among the treaties. In the case of OP (art. 9), 10 ratifications are required. CERD (art. 14.9) and MWC (art. 77.8) require 10 declarations of acceptance. CAT (art. 22.8) requires five declarations of acceptance.

(b) Anonymity

22. All procedures establish that anonymous communications shall be inadmissible.[10]

(c) Subject-matter of a communication (ratione materiae)

23. All procedures under review establish that communications are admissible only if they claim a violation by the State party of any of the rights set forth in the instrument.[11] The OP, CAT and CERD use the formulation "... who claim to be victims of a violation by that/a State party of any of the rights set forth in/of the provisions of the Covenant/Convention", whereas MWC uses a slightly different formulation, namely "... who claim that their individual rights as established by the present Convention have been violated by that State party". Thus, any claim of a violation must fall within the scope of the Covenant or Convention. Likewise, a communication must claim that the claimants are "victims of a violation", i.e. that some detriment has been suffered.

24. Admissibility ratione materiae is also dealt with in the rules of procedure of the Human Rights Committee regarding the first Optional Protocol.[12] While some criteria are reiterated from OP itself, certain aspects are further elaborated. Rule 90 (b) specifies that a claim of a violation must be "sufficiently substantiated" for the Committee to reach a decision on admissibility. While the claimant, at this stage of the procedure, is not required to submit all information concerning the merits of a case, nevertheless, she or he must sufficiently substantiate the case to allow the Committee to reach a decision on the admissibility of the communication.

(d) Jurisdiction (admissibility ratione loci)

25. This criterion establishes the connection which must exist between the claimant and the State party against which a communication is brought. All procedures require that the claimant be subject to the jurisdiction of the State party concerned. In the case of CERD, the formulation used states that the claim must be from claimants "within [the] jurisdiction" of the State party.

(e) Abuse of the right to submit a communication

26. Three instruments, i.e. OP, CAT and MWC, have identical provisions that a communication shall be considered inadmissible when the treaty body "considers [it] to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Covenant/Convention".[13] No comparable provision is contained in CERD.

(f) Duplication of procedures

27. Two procedures, i.e. CAT and MWC, contain as an admissibility criterion that "the same matter has not been, and is not being, examined under another procedure of international investigation or settlement". Therefore, the same matter cannot be examined at the same time under more than one international procedure. Further, the matter may not be brought under CAT or MWC after having been dealt with by another international body.[14] In the case of OP, the communication shall not be considered unless it has been ascertained that the same matter "is not being" examined under another procedure.[15] This formulation indicates that only the simultaneous examination of a case is precluded, and that the Committee is, in principle, competent to consider cases that have been examined elsewhere. In fact, the Human Rights Committee has considered a number of cases previously examined by the European Commission of Human Rights and subsequently submitted to the Human Rights Committee.[16, 17] CERD does not address this element.

(g) Exhaustion of domestic remedies

28. In the case of the four procedures under review, no communication shall be considered unless the relevant treaty body has ascertained that the petitioner has "exhausted all available domestic remedies".[18] In all cases, this is subject to the exception that it "shall not be the rule where the application of the remedies is unreasonably prolonged". Additional exceptions to this general rule are contained in CAT and MWC, providing that the exhaustion of domestic remedies shall also not be the rule where the application of domestic remedies "is unlikely to bring effective relief to that individual/to the person who is the victim of the violation of this Convention". In the case of MWC, the exception is further qualified that this shall not be the rule where, "in the view of the Committee", the application of the remedies is unreasonably prolonged. The rules of procedure of the Committee on the Elimination of Racial Discrimination add that a communication must be submitted, except in case of exceptional circumstances, within six months after the exhaustion of all available domestic remedies.[19]

29. In the jurisprudence of the Human Rights Committee, the requirement of the exhaustion of domestic remedies applies only to the extent that these remedies are available and effective.[20] No time limit for the submission of a communication after the exhaustion of domestic remedies has been set by the Human Rights Committee.

(h) Written nature

30. The OP specifies that individuals fulfilling certain other admissibility criteria "may submit a written communication".[21] None of the other procedures explicitly addresses the question of the written or non-written nature of a communication, but the rules of procedure and practice of the treaty bodies establish their essentially written nature. At the same time, none of the treaty bodies requires that a communication be submitted in a specific format.

31. The practice and rules of procedure of the Committee on the Elimination of Racial Discrimination and the Committee against Torture indicate that communications need to be submitted in writing. In the case of the Committee on the Elimination of Racial Discrimination, rule 85 establishes the summarized format in which the Secretary-General shall transmit to the Committee each communication received, and that "the full text [emphasis added] of any communication brought to the attention of the Committee shall be made available to any member of the Committee upon request", which clearly points to the requirement that the original submission be made in writing. Additional information from both the petitioner and the State party that might be requested at different stages of the process are also to be provided in written form.[22]

(i) Admissibility ratione temporis

32. The temporal dimension of admissibility addresses the question of whether communications may be brought concerning violations which occurred before the entry into force of the procedure for the State party concerned, or concerning violations which occurred after that date. None of the procedures under review explicitly addresses this question either in the provisions of the treaty itself, or in the rules of procedure.

33. While, in practice, the four procedures under review allow communications only with regard to alleged violations which have occurred after their entry into force for the State party concerned, the treaty bodies have also had to deal with communications regarding so-called continuing violations, i.e. violations that have started prior to the entry into force of the procedure, but which continue after that date.

34. The Human Rights Committee has resolved a number of cases where the temporal dimension of admissibility was an issue. In general, events that have occurred prior to the entry into force of OP are inadmissible. If a communication concerns an event prior to the entry into force of the procedure, then the communication is admissible only when the events have had continued effects which themselves constitute violations of the Covenant after the entry into force of OP.

35. Most recently, in communication No. 520/1992, the Human Rights Committee stated: "... the State party's obligations under the Covenant apply as of the date of its entry into force for the State party. There is, however, a different issue as to when the Committee's competence to consider complaints about alleged violations of the Covenant under the Optional Protocol is engaged. In its jurisprudence under the Optional Protocol, the Committee has held that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless the violations complained of continue after the entry into force of the Optional Protocol. A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party".[23] In communication No. 410/1990, the Committee did not rule on the question of the admissibility ratione temporis of a communication concerning a violation that occurred prior to the entry into force of the Optional Protocol since the State party conceded the admissibility ratione temporis.[24]

(j) Reservations to procedures

36. None of the four procedures under review contains a provision stating whether reservations to the procedure are permissible or not. In practice, certain reservations or declarations have been entered with regard to the first Optional Protocol and the communications procedures under CERD and CAT.

37. Reservations or declarations entered upon ratification to the first OP by States parties fall into two categories. First, a number of States parties have entered reservations or declarations with regard to article 5.2 (a) of the Optional Protocol specifying that the Committee shall not consider any communication concerning a matter which has already been considered under other procedures of international investigation.[25] The second category of reservations covers the temporal dimension of OP. A number of States have entered reservations or declarations to the extent that they recognize the competence of the Human Rights Committee to receive and consider communications resulting from acts occurring after (emphasis added) the entry into force for the State party of OP, or from a decision relating to such acts after that date.[26] Reservations or declarations of these two categories have been viewed by the Human Rights Committee as not violating the object and purpose of the first Optional Protocol.[27] The Human Rights Committee insists on its competence when events or acts occurring before the date of entry into force of the first OP have continued to have an effect on the rights of a victim subsequent to that date. Furthermore, the Committee has made it clear that reservations relating to the required procedures under the first Optional Protocol would not be compatible with its object and purpose.[28]

38. The Human Rights Committee has noted that a reservation cannot be made to the Covenant through the vehicle of the Optional Protocol.[29]

39. Furthermore, the Human Rights Committee is prevented from considering communications under the first Optional Protocol with regard to articles of the Covenant to which a State party has entered a permissible reservation upon ratification of or accession to the Covenant. In that regard, the Committee declared itself competent to determine whether a reservation is compatible with

the object and purpose of the Covenant and, consequently, to determine the admissibility of a communication.[30]

40. In declaring recognition of the competence of the Committee on the Elimination of Racial Discrimination in accordance with article 14 of CERD, a number of States parties have put forward reservations or declarations specifying that the Committee shall not consider any communications unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.[31] Others specify the applicability ratione temporis of the procedure, i.e. that it is recognized for events, or decisions thereon, occurring after the entry into force of the procedure.[32]

41. In declaring recognition of the competence of the Committee against Torture under article 22 of CAT, one State party declared that such competence would cover events occurring after the adoption of the declaration.[33]

(k) Reference to a State party

42. Before declaring a communication admissible, all four procedures under review establish that any communication is to be brought to the attention of the State party.[34] CERD puts forward the requirement that this be done "confidentially", and that the identity of the individual or groups of individuals concerned "shall not be revealed without his or their express consent".[35] So far, no petitioner has requested that his or their identity should not be revealed to the State party concerned.

43. The rules of procedure of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture provide that a communication may not be declared admissible "unless the State party concerned has received the text of the communication and has been given an opportunity to furnish information or observations" relevant to the question of admissibility, notably information relating to the exhaustion of domestic remedies.[36] To reach a decision on admissibility, a Committee may request that the author provide additional information or clarifications relevant to the question of admissibility.[37] The rules of procedure establish that the treaty bodies, in the pre-admissibility stage, may set time limits for the submission of such additional information, clarifications and observations "with a view to avoiding undue delay".[38] If deadlines are not kept either by the State party or by the author, the treaty body may decide the question of admissibility "in light of available information".[39]

2. Standing

44. Standing under a communications procedure determines who may submit a communication under the instruments under review. If a complainant does not have standing under the instrument, the communication will be rejected by the treaty body on formal grounds, without consideration of the merits. Under the existing instruments, standing is given to individuals, or to individuals or groups of individuals.

45. In all cases, the question of standing is linked to the requirement that a communication may be submitted only by an individual or group of individuals claiming to be the victim(s) of a violation of a right protected by the treaty. The subject(s) of the right to submit a communication, i.e. the alleged victim(s), may designate a representative for submitting a communication, i.e. his or her legal counsel or some other agent representing the alleged victim.

46. Under OP, CAT and MWC, only individuals, i.e. natural persons, may submit a communication to the respective committees for consideration.[40] CERD gives standing explicitly also to groups of individuals.[41] CAT and MWC add that such communications may be submitted "on behalf of" individuals.

47. The rules of procedure of the Human Rights Committee further provide that a communication may be submitted by an individual as well as by individuals, thus clarifying that more than one individual may join in submitting a communication on the same matter. The individual herself is not required to submit the communication: this may be done by a relative or other designated representative, a formulation which has been held to encompass an alleged victim's legal counsel or other duly designated representative. Such authorization can be provided, for example, in a power of attorney or other documented proof that the author is authorized to act on behalf of the alleged victim. The rules of procedure of the Committee against Torture and the Committee on the Elimination of Racial Discrimination specify that relatives of the alleged victim fall into the same category as a designated representative.[42] Failure to provide proof that the author is authorized to act on behalf of the alleged victim(s) causes inadmissibility.

48. If it appears that an alleged victim is unable to submit a communication, the communication may be submitted on her behalf.[43] In this context, both the Committee against Torture and the Committee on the Elimination of Racial Discrimination require specifically that the author of the communication justify her acting on the victim's behalf.[44] This requirement also exists for communications under OP, as demonstrated by the Human Rights Committee's jurisprudence.[45] Failure to provide justification when acting on behalf of the alleged victim without due authorization leads to a declaration of inadmissibility.[46]

3. Proceedings on the merits

49. The second stage in the consideration of a communication is the proceedings on the merits of a case. This stage, reached only after communications have been declared admissible, involves the Committee, as well as the complainant and the State party against which a communication has been brought.

50. The decision declaring a communication admissible is communicated to the State party and to the author of the complaint.[47] Following such a decision, the State party is requested to "submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by the State".[48] In the case of communications under CERD, the State party has three months. In the case of communications under OP, CAT and MWC, a six-month time limit for submission of responses by the State party is envisaged.[49]

According to their rules of procedure, the Committee on the Elimination of Racial Discrimination and the Committee against Torture may indicate, if deemed necessary, the type of information they wish to receive from the State party concerned.[50]

51. The rules of procedure of all three treaty bodies establish that information submitted by the State party in accordance with the provisions referred to in paragraph 49 above is to be transmitted to the author of the communication who may submit any additional written information or observations within a time limit specified by the treaty body.[51]

52. The consideration of a communication on the merits occurs "in the light of all information/written information made available" by the State party and the complainant.[52] In the practice of the treaty bodies, all information submitted by the concerned parties in the context of a specific communication or requested by the treaty body is to be made available to both parties.[53] All three treaty bodies may request the State party to take interim measures to avoid possible irreparable harm to the claimant.[54]

53. While the two stages of consideration of a communication, i.e. admissibility and consideration of the merits, are usually kept separate, the Human Rights Committee decided in 1995 that it would join the consideration of these two stages when both parties consented and the Committee considered it appropriate.[55] Such a joinder may expedite the proceedings of the Committee.

54. Consideration of communications under all procedures under review takes place in closed meetings.[56]

55. All three treaty bodies are competent to reconsider a decision declaring a communication inadmissible at the written request of the complainant where such a request provides additional information relevant to admissibility of the communication.[57] They also may review or revoke a decision on admissibility during the proceedings on the merits in the light of any explanation a State party may provide, and after affording an opportunity to the complainant to submit additional information.[58]

4. Working groups and special rapporteurs

56. The rules of procedure of the three treaty bodies provide for the establishment of working groups to assist the respective treaty body in expediting its mandate under OP, under article 14 of CERD and under article 22 of CAT.

57. All three treaty bodies have established working groups for the purpose of making "recommendations to the Committee regarding the fulfilment of the conditions of admissibility laid down" in the respective instrument.[59] Once a decision on admissibility has been taken, the treaty bodies may again refer the matter to a working group or, in the case of the Human Rights Committee, to a special rapporteur, for assistance and to make recommendations to the treaty body.[60] Opinions or views on the merits of a communication are always adopted by the treaty body as a whole.[61]

58. In each case, working groups are composed of not more than five members. They elect their officers, develop their working methods and apply as far as possible the rules of procedure of the related treaty body.[62]

59. In the practice of the Human Rights Committee, its Working Group on Communications meets for one week immediately prior to the session of the Committee. It is authorized to adopt decisions declaring communications admissible when all five members so agree, otherwise, the matter is referred to the Committee as a whole. In any case, the Working Group may refer a decision on admissibility to the Committee as a whole. Decisions declaring communications inadmissible are to be taken only by the Committee as a whole, but the Working Group may make recommendations to the Committee in that respect.[63] The Committee on the Elimination of Racial Discrimination and the Committee against Torture have, so far, not set up pre-sessional working groups for this purpose.

60. The rules of procedure of all three treaty bodies, in addition to providing for working groups to assist the Committees in handling communications at the admissibility stage and during consideration of the merits, allow the treaty body to designate special rapporteurs from among its members to assist in the handling of communications.[64] According to the practice of the Human Rights Committee, its Special Rapporteur on new communications is called upon to process new communications as they are received, including between sessions of the Committee. The duties of the Special Rapporteur include, in particular, the transmission of new communications to the State party requesting information or observations relevant to the question of admissibility. The Special Rapporteur may also issue requests for interim measures. Furthermore, the Special Rapporteur may make recommendations to the Committee to declare communications inadmissible without forwarding them to the State party.[65] The Committee against Torture appoints a special rapporteur for this purpose in every new case. The very limited caseload of the Committee on the Elimination of Racial Discrimination has, so far, not led to the designation of special rapporteurs to assist it in the handling of communications.

5. Views and follow-up

61. The third stage in the consideration of a communication is the adoption by the treaty body of its decision or views on a complaint. All procedures under review contain a provision that the treaty body "shall forward its views/its suggestions and recommendations, if any, to the State Party concerned and to the individual/petitioner."[66] The treaty bodies, after having made a finding of a violation of a provision of the instrument, usually ask the State party to take appropriate steps to remedy the violation. Depending on the case, these steps might be limited to recommendations that a State party provide an "appropriate remedy", or they might be more specific, such as recommending the review of policies or the repeal of a law, the payment of compensation, or the prevention of future violations.

62. The rules of procedure of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture provide that any member of the treaty body may request that her individual concurring or

dissenting opinion be appended to the views of the Committee. Such individual opinions may also be appended to the Human Rights Committee's decisions declaring communications inadmissible. Consequently, although a treaty body may strive to arrive at its decisions by consensus, no unanimity is required in the adoption of its views on a communication.[67] In the practice of the Human Rights Committee, members' concurring or dissenting opinions have been appended to the Committee's views in specific cases.

63. The last stage in the communications procedure consists of the follow-up phase. Although not specifically addressed in the instruments per se, all treaty bodies have developed a practice of following up on decisions taken with regard to a specific communication. The rules of procedure of the Committee on the Elimination of Racial Discrimination establish that "the State party concerned shall be invited to inform the Committee in due course of the action it takes in conformity with the Committee's suggestions and recommendations".[68] Likewise, the rules of procedure of the Committee against Torture provide that "the State party concerned shall be invited to inform the Committee in due course of the action it takes in conformity with the Committee's views".[69] Depending on the decision, a Committee may set a time limit for the receipt of information on action taken by the State party.

64. In 1990, the Human Rights Committee established a procedure for monitoring the follow-up to its views under article 5.4 of OP. First, the Committee indicates in its decisions a time limit for the receipt of information with regard to action taken by the State party in respect of the Committee's views (usually 90 days). Second, the Committee proceeds with the creation of a special rapporteur for the follow-up on views. According to rule 95, the Committee designates a special rapporteur for the purpose of ascertaining the measures taken by the State party to give effect to the Committee's views. To that end, the special rapporteur requests written information from the State party, and informs the Committee accordingly. The first follow-up mission by the special rapporteur to a State party was undertaken in 1995.[70] Any action, or inaction, on the part of States parties with regard to the Committee's views is reported in the Committee's annual report. Finally, the Committee has incorporated into its guidelines for the preparation of reports a section which requests reporting States, as applicable, to explain "what action has been taken relating to the communication concerned. In particular, the State party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated",[71] thus making follow-up to communications part of the reporting procedure.

65. In order to enhance the impact of its views adopted under OP, the Human Rights Committee has taken a number of decisions, including that every form of publicity will be given to follow-up activities. It also decided to include a separate and highly prominent section on follow-up activities under OP in its annual report. In this section, information is included, inter alia, as to which States parties have, or have not, provided follow-up information or cooperated with the special rapporteur for the follow-up on views.[72]

66. The annual reports of all three treaty bodies contain sections on the consideration of communications and action taken thereon by the treaty body. In addition to a summary of the communications examined, the reports also contain

the texts of views adopted under the communications procedure, as well as the texts of any decisions taken to declare a communication inadmissible.[73]

6. Interim measures

67. While the instruments under review do not contain specific provisions which would empower the relevant treaty body to request a State party to take interim measures pending its adoption of final views on a communication, such steps are foreseen in the rules of procedure of the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination.

68. In the case of the Human Rights Committee, rule 86 provides that the Committee may, after receipt of a communication and before adopting its views, request a State party to take interim measures which "may be desirable to avoid irreparable damage to the victim of the alleged violation". At the same time, the State party is advised by the Committee that such a request for interim measures "does not imply a determination on the merits of the communication". The Committee has applied this rule on several occasions, notably in cases involving the death penalty and where the alleged victim claimed a denial of fair trial. Specifically, stays of execution have been granted in this connection.[74] Furthermore, the Committee's rules of procedure determine that interim measures requested under rule 86 shall not be subject to the rule of confidentiality.[75]

69. A similar provision on interim measures is contained in rule 108.9 of the Committee against Torture. The Committee "may request the State party to take steps to avoid possible irreparable damage to the person or persons who claim to be victim(s) of the alleged violation" and such a request "does not imply that any decision has been reached on the question of the admissibility of the communication". This provision has been applied by the Committee against Torture in cases of asylum seekers who have faced imminent deportation or expulsion to their country of origin where they feared being subjected to torture.

70. In the case of the Committee on the Elimination of Racial Discrimination, rule 94.3 states that in the course of its consideration of a communication, the Committee "may inform the State party of its views on the desirability, because of urgency, of taking interim measures to avoid possible irreparable damage" to the petitioner. In such an instance, the Committee advises the State party also that "such expression of its views on interim measures does not prejudge either its final opinion on the merits of the communication or its eventual suggestions and recommendations".

7. Confidentiality

71. The question of confidentiality in the framework of the communications procedures under review arises at a number of stages of the process. This is also an issue with regard to confidentiality inter partes, and vis-à-vis the public at large.

(a) Anonymity of the communication

72. As discussed above under admissibility criteria, all procedures require that a communication not be anonymous. Thus, the identity of the author must be clearly established in the communication in order to be received by a treaty body.

73. Before declaring a communication admissible, it is submitted to the State party concerned for its comments. At that stage, CERD contains the proviso that "the identity of the individual or group of individuals concerned shall not be revealed without his or their express consent".[76] So far, no petitioner has objected to the disclosure of his identity to the State party concerned.[77] To satisfy the requirement, all petitioners are, nevertheless, asked to state their consent in writing before the communication is transmitted to the State party. On one case, however, the Committee on the Elimination of Racial Discrimination decided, at the express request of the petitioner, not to reveal his identity when the opinion in his case was made public.[78]

(b) Examination of communications in closed meetings

74. Three procedures, i.e. OP, CAT and MWC, establish that "the Committee shall hold closed meetings when examining communications under the present Protocol/ article".[79] This provision also extends to any meetings of working groups. No comparable provision is contained in CERD. Rule 88 of the rules of procedure of the Committee on the Elimination of Racial Discrimination establishes, however, that meetings of the Committee or its working group for the purpose of examining communications in accordance with article 14 shall be closed.

75. The rules of procedure of all three treaty bodies provide that the treaty body may issue communiqués for the use of the information media and the general public regarding the activities of the body at the closed meetings.[80]

(c) Confidentiality of documents

76. The rules of procedure of the Human Rights Committee[81] establish that all documents pertaining to the procedure under OP, i.e. submissions from the parties and all working documents of the Committee, a working group or special rapporteur, are confidential. Any decisions taken by the Committee which are not of a final nature, such as decisions requesting information or comments from the parties involved, are also confidential. Likewise, the parties are under an obligation to maintain the confidentiality of any non-final decision of the Committee brought to their attention. While a communication is under consideration, either with regard to admissibility or during the proceedings on the merits, the parties are under an obligation to observe and respect the confidentiality rule concerning all submissions made by the parties. After the Committee has issued a final decision, both parties are free to release their own submissions.

77. Although not specifically addressed in a rule, the practice of the Committee on the Elimination of Racial Discrimination is that all documents pertaining to the work of the Committee under article 14 (submissions from the parties and other working documents of the Committee) are confidential.[82]

(d) Final decisions of the Committees

78. The texts of the final decisions of the Human Rights Committee adopted in accordance with article 5.4 of OP are made public.[84] Decisions declaring a communication inadmissible are normally made public.[84] Decisions declaring a communication admissible are not made public. The practice of the Committee on the Elimination of Racial Discrimination and the Committee against Torture is the same.

79. All three treaty bodies include in their annual reports information about their activities undertaken in the framework of the individual communications procedures.[85] In practice, the text of all final decisions of the treaty bodies, i.e. either on admissibility or on the merits, are reproduced in extenso in the Committees' annual reports.

80. All instruments specify that the treaty bodies are to forward their views to the State party and to the petitioner.[86]

(e) Identity of the author

81. As communications may not be anonymous, the identity of the author is known to the respective treaty body, and is also communicated to the State party when a Committee seeks the written explanations or clarifications of the State party before deciding on the admissibility of the communication, and when a Committee seeks to receive any other written information for the consideration of the communication on its merits.[87]

82. The identity of the author and of the State party are always indicated in the final decisions on the merits of the Human Rights Committee. Unless the Committee decides otherwise, decisions declaring communications inadmissible indicate the identity of the State party and, as a rule, the identity of the author(s) in the text made public. Where the Committee decides otherwise, the State party shall also refrain from disclosing the identity of the author(s).[88]

83. At the request of the author, in the public decision on the merits concerning communication No. 4/1991 dealt with by the Committee on the Elimination of Racial Discrimination, the name of the author was not disclosed at his express request although the State party had been apprised of it during the course of the proceedings.[89] In a decision declaring communication No. 5/1994 inadmissible, the Committee on the Elimination of Racial Discrimination did not disclose the identity of the author (A/50/18, annex VIII).

8. Participation of representatives

84. The procedure under OP at all stages is exclusively of a written nature. While the proceedings before the Committee on the Elimination of Racial Discrimination and the Committee against Torture are, in general, also of a written nature, the rules of procedure of the Committee on the Elimination of Racial Discrimination establish that during the proceedings on the merits of a communication, "the Committee may invite the presence of the petitioner or his

representative and the presence of representatives of the State party concerned in order to provide additional information or to answer questions on the merits of the communication".[90] In practice, no such situation has yet occurred. Similarly, the rules of procedure of the Committee against Torture elaborate that the Committee "may invite the author of the communication or his representative and representatives of the State party concerned to be present at specified closed meetings of the Committee in order to provide further clarifications or to answer questions on the merits of the communication".[91] So far, this has not yet occurred.

9. Information considered

85. In addition to the written or non-written nature of information considered, the source of information used by a treaty body in considering a communication needs to be established.

86. As noted in paragraphs 30, 31 and 84 above, the procedures under all four instruments are, in general, based on written information submitted to the treaty bodies by the parties concerned.

87. In general, only information provided by the parties concerned can be used by the Committees in determining admissibility and in reaching a decision on the merits of a case. Article 5.1 of OP specifies that the Human Rights Committee shall consider communications in the light of all written information "made available to it by the individual and by the State party concerned". CERD uses a similar formulation, i.e. "in the light of all information made available to it by the State party concerned and by the petitioner".[92] Likewise, CAT and MWC determine that communications shall be considered in the light of "all information made available to [the Committee] by or on behalf of the individual and by the State party concerned".[93]

88. While all Committees, in their rules of procedure, provide for a role for the Secretary-General in requesting clarifications from the author(s) during the admissibility stage of a communication,[94] the rules of procedure of the Committee on the Elimination of Racial Discrimination and the Committee against Torture include an additional provision enabling the Committees to obtain, through the intermediary of the Secretary-General, at any time in the course of the examination, from United Nations bodies or the specialized agencies, any documentation that may assist in the disposal of the case.[95] In its views in case No. 13/1993, the Committee against Torture drew on a number of reports prepared for the Commission on Human Rights by the Secretary-General, by two of the Commission's Special Rapporteurs and by one of the Commission's working groups when concluding that a consistent pattern of gross, flagrant or mass violations of human rights existed in the country of origin of the petitioner.[96]

10. Registers

89. According to the rules of procedure of the three treaty bodies, the Secretary-General is requested to maintain a permanent register of all communications received under each instrument.[97] These registers serve as a working tool of the secretariat of the treaty bodies. They help to ensure that all communications are accounted for and attended to under the appropriate procedure (e.g., avoiding duplication of consideration) and permit the compilation of public statistical data concerning the status of each communication under the respective procedure. The members of the human rights treaty bodies concerned are free to consult the registers if they so wish. The registers are not, however, made accessible to others.

11. Publicity

90. ICCPR, CERD and CAT include specific provisions which require reporting on activities of the relevant treaty bodies under the communications procedures in their annual reports.[98] While the future committee under MWC would also be requested to present an annual report "on the implementation of the present Convention" to the Assembly,[99] no specific provision is made with regard to its activities under article 77 of the Convention.

91. The desirability of additional publicity for the procedure and any decisions taken thereunder is reflected in the rules of procedure of all three treaty bodies, which provide for the issuance of communiqués addressed to the media and the general public on the activities of the treaty bodies under the respective individual communications procedures.[100]

12. Caseload and meeting time

92. Since the Human Rights Committee started its work under OP in 1977, 720 communications concerning 53 States parties have been registered for its consideration. Since the Committee on the Elimination of Racial Discrimination started its work under article 14 of the Convention at its thirtieth session, in 1984, 8 communications concerning 5 States parties have been registered for its consideration. Since the Committee against Torture started its work under article 22 of the Convention at its second session, in 1989, 53 communications concerning 13 States parties have been registered for its consideration. The status of these communications is as follows:

	HRC	CERD	CAT
Total number of cases registered	720	8	53
Concluded by views/opinion	239	4	7
Declared inadmissible	224	1	18
Discontinued or withdrawn/suspended	115	0	7
Declared admissible, but not yet concluded	41	0	3
Pending as pre-admissibility stage	101	3	18
Others (on file awaiting further clarification by the author)	several hundred	0	12

Out of the 239 cases on which it adopted views under article 5.4 of the first Optional Protocol, the Human Rights Committee found 181 cases of violations of the Covenant.

93. The treaty bodies allocate a certain number of meetings of their currently mandated regular annual meeting time for their work under the first Optional Protocol, under article 14 and under article 22, respectively. Out of a total of nine weeks' annual meeting time, the Human Rights Committee allocates on average 18 to 24 meetings a year to deal with communications under OP. Its Working Group on Communications, which assists the Committee in handling communications, meets three times a year for a total of three weeks annually.

94. The Committee on the Elimination of Racial Discrimination, of its six weeks' annual meeting time, allocates on average two to three meetings annually for its work under article 14. The Committee against Torture allocates on average 8 to 12 meetings annually for consideration of communications under article 22 out of a total of four weeks' meeting time. So far, for activities under article 20,[101] the Committee against Torture has allocated a total of 52 meetings over a six-and-a-half-year period.

13. Funding of the work of the treaty bodies

95. Funding for the work of the three treaty bodies under review, i.e. the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination, is provided from the regular budget of the United Nations.

96. In accordance with article 36 of ICCPR, the Secretary-General of the United Nations "shall provide for the necessary staff and facilities for the effective performance of the functions of the Committee" under the Covenant.

97. The Convention on the Elimination of Racial Discrimination provides that "States Parties shall be responsible for the expenses of the members of the

Committee while they are in performance of Committee duties".[102] The Convention against Torture, in article 18.5, provides that "the States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of [article 18]".[103]

98. In accordance with amendments adopted by the States parties to CERD on 15 January 1992, and the States parties to CAT on 9 September 1992, as endorsed by the General Assembly in resolution 47/111, the activities of the Committee on the Elimination of Racial Discrimination and the Committee against Torture have been financed under the regular budget of the United Nations since January 1994. As at 1 September 1996, 17 States parties of the 86 required for the entry into force of the amendment to CERD, and 17 States parties of the 45 required for the entry into force of the amendment to CAT had notified the Secretary-General that they had accepted the amendments.

14. Composition of the treaty bodies

99. ICCPR in article 28, CAT in article 17, CERD in article 8 and MWC in article 72 provide the criteria for the members of the treaty bodies. These include that members be persons of high moral standing, acknowledged impartiality and recognized competence in the field of human rights. Consideration is to be given to equitable geographical distribution, the usefulness of the participation of some persons having legal experience and the representation of the different forms of civilization as well as of the principal legal systems.

100. A breakdown by profession of the members of the Human Rights Committee shows that it currently consists of 17 lawyers, including law professors and judges, and one political scientist. The Committee against Torture consists of 9 lawyers and one medical doctor, expert in the treatment of victims of torture. About half of the membership of the Committee on the Elimination of Racial Discrimination are current or retired diplomats, one third are in some form of legal profession and the remaining members have a variety of professional backgrounds.

B. Treaty-based inquiry procedures

101. The Convention against Torture is the only international human rights treaty which currently provides for an inquiry procedure to be conducted by its treaty body. The procedure is initiated by the treaty body itself "if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party".[104] In accordance with the rules of procedure of the Committee, information which is, or appears to be, submitted for the Committee's consideration under article 20.1, is brought to the Committee's attention by the Secretary-General of the United Nations.[105] This open-ended formulation allows for the submission of information by individual(s), groups, non-governmental

organizations, or other entities. In practice, it is primarily non-governmental organizations that submit information which might initiate an inquiry.

102. A precondition for the Committee's ability to receive information which could lead to the conduct of such an inquiry is that the State party in question, at the time of the ratification of, or accession to the Convention, has not made a reservation declaring that it does not recognize the competence of the Committee provided for in article 20.[106] Such a reservation may subsequently be withdrawn by the State party at any time.[107]

103. On the basis of information received and observations sought thereon from the State party, "as well as any other relevant information available to it",[108] the Committee may decide to proceed with a confidential inquiry. To that end, the Committee designates one or more members of the Committee to proceed, and to report to the Committee urgently.[109] If the Committee embarks on an examination, it seeks the cooperation of the State party[110] at all stages of the proceedings. While an inquiry may also proceed without the cooperation of the State party, a visit to its territory in the course of such an inquiry requires the State party's agreement.[111]

104. The findings arrived at by the Committee as a whole, and any comments and suggestions concerning the situation, are subsequently transmitted to the State party. The Committee has the possibility of including a summary of the results of its proceedings in its annual report. Such inclusion is preceded by consultations with the State party thereon, but the final decision rests with the Committee.[112]

105. The inquiry procedure is confidential at all stages: the meetings held in the exercise of the Committee's functions under article 20 are closed; all documents relating to the proceedings are confidential, as are any hearings which may be held in the conduct of an inquiry or assistance received during an inquiry. The only public statement results from the Committee's decision on the publication of the findings and any press communiqués the Committee may issue concerning proceedings in accordance with article 20,[113] as well as the inclusion of a general summary of activities under article 20 in the Committee's annual report.[114]

106. So far, the Committee has allocated on average just under four meetings to its activities under article 20 at each of its fourth to sixteenth sessions. It has publicly announced, after consultations in accordance with article 20.5, the results of its proceedings relating to its inquiries under article 20 in two States parties to the Convention.[115]

II. CHARTER-BASED PROCEDURES

107. Charter-based procedures, as indicated in paragraphs 9 and 10 above, are established in a decision, usually in a resolution, of an intergovernmental body defining the mandate or purpose of the procedure. Two Charter-based procedures, namely the communications procedure of the Commission on the Status of Women, and the so-called 1503 procedure of the Commission on Human Rights, are summarized below.

A. Communications procedure of the Commission on the Status of Women

108. The basis for this procedure is Economic and Social Council resolution 76 (V) of 5 August 1947, as amended by Council resolution 304 (I) (XI) of 14 and 17 July 1950, and reaffirmed by Council resolutions 1983/27 of 26 May 1983 and 1993/11 of 27 June 1993. These resolutions empower the Commission on the Status of Women to consider confidential and non-confidential communications on the status of women in any part of the world.

109. The Commission is authorized to appoint at its annual sessions a Working Group from among its members, consisting of five representatives, one from each regional group. The Working Group considers communications with a view to bringing to the attention of the Commission those communications, including the replies from Governments, which appear to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women. All communications, confidential as well as non-confidential, are considered in closed meetings.

110. The admissibility criteria for communications are taken from resolution 1 (XXIV) of 13 August 1971 of the Subcommission on Prevention of Discrimination and Protection of Minorities. Accordingly, any person or group of persons who have direct and reliable knowledge of those violations, or non-governmental organizations acting in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and having direct and reliable knowledge of such violations may submit a communication for consideration by the Commission. To this is added that such a communication must refer specifically to women or women's issues, that it must appear to reveal a consistent pattern of gross and reliably attested injustice and discriminatory practices against women and that the reported act or practice of discrimination against a woman happens solely on the grounds of her being a woman. Anonymous communications may not be received.

111. The Secretary-General compiles lists of confidential and non-confidential communications from the information received. The non-confidential list includes communications dealing with principles relating to the promotion of women's rights in the political, economic, civil, social and educational fields. They do not identify any particular State as the alleged perpetrator of human rights violations. The confidential list includes communications alleging violations of women's rights by States, including patterns of violations in particular countries, or the identification of a problem facing women in several countries.

112. The Working Group considers all communications before it, and submits its report to the Commission. The report, based on the Working Group's analysis of the confidential and non-confidential communications, may indicate the categories in which communications are most frequently submitted to the Commission.

113. The Commission is empowered to make recommendations to the Economic and Social Council on what action should be taken on emerging trends and patterns of

discrimination against women revealed by communications on the status of women (see Council resolution 1993/11), but is not authorized to take any action itself.

114. The experience with this procedure was assessed by the Working Group in 1991. It noted that "while the communications procedure provided a valuable source of information on the effects of discrimination on the lives of women, the current procedure for communications on the status of women should be improved to make it more efficient and useful" (E/1991/28, para. 48). The mandate of the Commission was subsequently reaffirmed by the Council in its resolution 1993/11.

115. At the fortieth session of the Commission, in 1996, the Commission, in adopting the report of the Working Group, noted that some recurring trends could be clearly identified, namely different forms of violence against women and violation of their human rights, particularly in situations of armed conflict and war. On previous occasions, the Working Group had identified violence against women in detention as a matter of concern.

116. The Working Group emphasized that the communications procedure of the Commission was not sufficient and therefore not effective. It recommended that the Commission's communications procedure be further improved. No further recommendations were submitted to the Economic and Social Council, however, and therefore no further action was taken either with regard to the identified trends of consistent patterns of reliably attested injustice and discriminatory practices against women or with regard to the functioning of the communications procedure of the Commission.

B. 1503 procedure of the Commission on Human Rights

117. This procedure, established under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, deals with communications relating to violations of human rights and fundamental freedoms anywhere in the world. It does not deal with individual cases, as such, but with situations that affect a large number of people over a protracted period of time.

118. Lists of communications are compiled by the Secretary-General, including short descriptions of each case, and any replies of Governments. The lists are submitted to the members of the Subcommission on Prevention of Discrimination and Protection of Minorities, as well as to the members of the Commission on Human Rights.

119. The Subcommission on Prevention of Discrimination and Protection of Minorities appoints a five-member working group, to meet annually for two weeks, immediately before the session of the Subcommission. This working group, known as the Working Group on Communications, considers all the communications and Governments' replies, and selects therefrom situations for the attention of the Subcommission.

120. A majority of the working group's members is needed to refer a communication to the Subcommission. No further action is taken on

communications which the working group does not pass on to the Subcommission. From among the communications submitted to it, the Subcommission determines those particular situations it wishes to refer to the Commission on Human Rights, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights.

121. A five-member working group of the Commission, known as the Working Group on Situations, has been appointed annually since 1974 to examine the material transmitted to the Commission by the Subcommission, and the observations of Governments. The Working Group is entrusted with recommending a course of action to be taken in each case.

122. Subsequently, the Commission may decide that a particular situation requires thorough study and a report and recommendations thereon to the Economic and Social Council, or that a particular situation should be the subject of an investigation by an ad hoc committee to be appointed by the Commission. The method of conducting a thorough study has been applied only once and the method of setting up an ad hoc investigatory body, with the consent of the Government concerned, has never been used.

123. Instead of these two alternatives, the Commission on Human Rights has developed a number of approaches in the application of the procedure, including discontinuation; continuing review; continuing review and appointment of an independent expert to enter into direct contacts with the Government and people concerned; discontinuation under the confidential procedure in order to take up the same matter under the public procedure governed by Council resolution 1235 (XLII).[116]

124. The admissibility criteria for communications are contained in the provisional procedures adopted by the Subcommission in its resolution 1 (XXIV). Accordingly, the objective of the communication must not be inconsistent with the relevant principles of the Charter of the United Nations, the Universal Declaration of Human Rights or other applicable instruments in the field of human rights.[117]

125. Communications under the 1503 procedure are admissible only if there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms; any replies received from the Governments concerned must be taken into account.

126. Anonymous communications are not admissible under the rules applicable to the 1503 procedure. The provisional procedures contain provisions to avoid overlap with other existing procedures and the repeated submission of communications already dealt with by United Nations organs. The exhaustion of domestic remedies is a precondition for consideration of a communication, unless it appears that such remedies would be ineffective or unreasonably prolonged. Any failure to exhaust domestic remedies must be satisfactorily explained. No communication will be admitted if it has manifestly political motivations or if its subject is contrary to the provisions of the Charter of the United Nations.

127. In order to be admitted, the communication must contain a description of the facts and must indicate the purpose of the petition as well as the rights

that have been violated. A communication will not be considered if its language is abusive or if it contains insulting references to the State against which the complaint is directed. Such communications may, however, be considered, if they meet other criteria for admissibility, after deletion of the abusive language.

128. Admissible communications may originate from a person or group of people who claim to be victims of human rights violations. They may also be admitted if they are submitted by a person or group of people having direct, reliable knowledge of violations. Under the 1503 procedure, non-governmental organizations may present communications on the condition that they act in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter, and with direct, reliable evidence of the described situation. However, a communication is inadmissible if it appears that it is based exclusively on reports disseminated by the mass media.

129. In accordance with Commission decision 3 (XXX) of 6 March 1974, the relevant documents on situations are referred to the Governments concerned, with the request that they make written observations thereon in time for the Commission's next session. This is done once the Subcommission has decided to refer a situation to the Commission.

130. A Government has the right to be represented and may participate fully in meetings when the Commission discusses a situation with which it is concerned, and when its decision is adopted.

131. All actions taken under the 1503 procedure remain confidential unless the Commission reports thereon to the Economic and Social Council. Until that stage is reached, the meetings of all bodies involved, i.e. the Commission, the Subcommission and both working groups, are held in private and the confidentiality of their records and documents is preserved.

132. Since the procedure started to operate, in 1972, particular situations in 73 countries have been referred to the Commission on Human Rights by the Subcommission for examination under the 1503 procedure. Since 1978, the Chairperson of the Commission on Human Rights has announced in public session the names of countries which have been under examination. The Chairperson makes a distinction between countries where the Commission continues to keep a human rights situation under review, and those where it has been decided to take no further action.

133. The Economic and Social Council sometimes decides - on its own initiative, after the study of a particular situation has ended, or on the recommendation of the Commission on Human Rights - that the confidentiality of material used in conjunction with a procedure may be removed.

Notes

[1] Report of the World Conference on Human Rights, Vienna, 14-25 June 1993 (A/CONF.157/24 (Part I)), chap. III (Vienna Declaration and Programme of Action), sect. II, para. 40; and Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), chap. I, resolution 1, annex II (Platform for Action), para. 230 (k).

[2] This aspect is recognized, particularly in para. 222 of the Platform for Action, which states: "If the goal of full realization of human rights for all is to be achieved, international human rights instruments must be applied in such a way as to take more clearly into consideration the systematic and systematic nature of discrimination against women that gender analysis has clearly indicated." Furthermore, the Platform for Action, in para. 217, notes a lack of appropriate recourse mechanisms at the national and international levels, and in paragraph 219 notes, inter alia, inadequate monitoring of the violation of the human rights of all women.

[3] See, inter alia, sect. II, para. 37 of the Vienna Declaration and Programme of Action and para. 221 of the Platform for Action.

[4] The following major international human rights instruments have reporting procedures: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) (not yet in force). On reporting under international human rights instruments, see, in general, Manual on Human Rights Reporting (United Nations publication, Sales No. E.91.XIV.1).

[5] See E/1989/22, annex III; see also HRI/GEN/1/Rev.2.

[6] A current list of thematic and country specific procedures of the Commission on Human Rights is annexed to the annotations to the provisional agenda for the fifty-second session of the Commission (Geneva, 18 March-26 April 1996) (E/CN.4/1996/1/Add.1). The functioning of various non-treaty mechanisms is dealt with in detail in the report of the Secretary-General (E/CN.4/1994/42), submitted to the Commission on Human Rights at its fiftieth session.

[7] The reporting obligations are contained in the following provisions: ICCPR article 40; ICESCR article 16, and article 17 in conjunction with Economic and Social Council resolution 1988/4; CERD article 9; CEDAW article 18; CAT article 19; CRC article 44; and MWC article 73.

[8] OP art. 1, CAT art. 22.1, CERD art. 14.1 and MWC art. 77.1.

[9] Last sentence of OP art 1, CAT art. 22.1, CERD art. 14.1 and MWC art. 77.1.

[10] OP art. 3, CAT art. 22.2, CERD art. 14.6 (a) and MWC art. 77.2.

[11] On the question of standing, see paras. 44-48.

[12] Rule 90 (b). The rules of procedure of the Human Rights Committee (HRC) are contained in document CCPR/C/3/Rev.3, with further amendments in document A/49/40, vol. I, annex VI.

[13] OP art. 3, CAT art. 22.2 and MWC art. 77.2.

[14] CAT art. 22.5 (a) and MWC art. 77.3 (a).

[15] OP art. 5.2 (a).

[16] A/49/40, vol. I, para. 402.

[17] The Spanish text of article 5.2 (a) employs different wording, i.e. the 'same matter has not been examined' under other procedures. This is considered to be an editorial error in the authentic Spanish text and is disregarded in the application of OP.

[18] OP arts. 2 and 5.2 (b), CAT art. 22.5 (b), CERD art. 14.7 (a) and MWC art. 77.3 (b).

[19] Rule 91 (f), cf. CERD article 14.5, in fine. The rules of procedure of the Committee on the Elimination of Racial Discrimination are contained in document CERD/C/35/Rev.3, with further amendments in document A/48/18, annex V.

[20] See A/49/40, vol. I, paras. 404-406.

[21] OP art. 2.

[22] On the nature of the proceedings on the merits, see paras. 49-55.

[23] A/49/40, vol. II, annex X, sect. T, para. 6.4.

[24] A/47/40, annex IX, sect. Q, para. 4.

[25] See also para. 27 (duplication of procedures). At least one reserving State, Austria, refers specifically to the procedure established by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Other States that have entered a reservation to this article on the same grounds include Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Norway, Poland, Romania, the Russian Federation, Slovenia, Spain and Sweden.

[26] Such declarations or reservations were entered, inter alia, by Chile, France, Germany, Malta, the Russian Federation and Slovenia.

[27] General Comment 24 (52) (CCPR/C/21/Rev.1/Add.6), para. 14.

[28] Ibid., paras. 13 and 14.

[29] Ibid., para. 13.

[30] Ibid., para. 18.

[31] Denmark, Finland, Iceland, Italy, Norway and Sweden.

[32] France and the Russian Federation. As noted in para. 27, CERD does not contain a provision concerning duplication of procedures.

[33] The Russian Federation, specifying the date of 1 October 1991.

[34] OP art. 4.1, CAT art. 22.3, CERD art. 14.6 (a) and MWC art. 77.4.

[35] CERD art. 14.6 (a).

[36] HRC rule 91.2, CAT rule 108.3 and CERD rule 92.3. The rules of procedure of the Committee against Torture are contained in document CAT/C/3/Rev.1, with further amendments in documents A/50/44, annex VI, and A/51/44, annex VI.

[37] HRC rule 91.1, CAT rule 108.1 and CERD rule 92.1.

[38] CAT rule 108.5; see also HRC rule 91.1 and CERD rule 92.5.

[39] CAT rule 108.6 and CERD rule 92.6.

[40] OP arts. 1 and 2, CAT art. 22.1 and MWC art. 77.1.

[41] CERD art. 14.1.

[42] CAT rule 107.1 (b) and CERD rule 91 (b).

[43] HRC rule 90 (a) and (b).

[44] CAT rule 107.1 (b) and CERD rule 91 (b).

[45] See, for example, case No. 8/1977, paras. 3 and 6, in Selected Decisions of the Human Rights Committee under the Optional Protocol: Second to Sixteenth Sessions (United Nations publication, Sales No. E.84.XIV.2).

[46] See, for example, communication No. 14/1994 of CAT on the question of admissibility (A/50/44, annex V, sect. B).

[47] HRC rule 93.1, CAT rule 110.1 and CERD rule 94.1.

[48] OP art. 4.2, CAT art. 22.3, CERD art. 14.6 (b) and MWC art. 77.4.

[49] OP art. 4.2, CAT art. 22.3, CERD art. 14.6 (b) and MWC art. 77.4.

[50] CAT rule 110.2 and CERD rule 94.2.

[51] HRC rule 93.3, CAT rule 110.4 and CERD rule 94.4.

[52] See also paras. 31, 87 and 88. On the participation of representatives, see para. 84.

[53] See also CERD rule 94.1 and CAT rule 110.1.

[54] See paras. 67-70 (Interim measures).

[55] See A/50/40, vol. I, para. 494 (communication No. 606/1994).

[56] See para. 74.

[57] HRC rule 92.2, CAT rule 109.2 and CERD rule 93.2.

[58] HRC rule 93.4, CAT rule 110.6 and CERD rule 94.6.

[59] HRC rule 89.1, CAT rule 106.1 and CERD rule 87.1.

[60] HRC rule 94.1, CERD rule 95.1 and CAT rule 111.1.

[61] On individual opinions, see para. 62.

[62] HRC rule 89.2, CAT rule 106.2 and CERD rule 87.2.

[63] See A/50/40, vol. I, para. 493. HRC rule 87.2.

[64] HRC rule 89.3, CAT rule 106.3 and CERD rule 87.3.

[65] See A/50/40, vol. I, para. 492.

[66] OP art. 5.4, CAT art. 22.7, CERD art. 14.7 (b) and MWC art. 77.7.

[67] See the report of the Human Rights Committee (A/49/40), vol. I, para. 388.

[68] CERD rule 95.5. See, for example, communication No. 4/1991, concerning which the Committee invited the State party, in its next periodic report, to inform it about any action it had taken with respect to the recommendations made by the Committee (A/48/18, annex IV, para. 7).

[69] CAT rule 111.5.

[70] See A/50/40, vol. I, paras. 557-562.

[71] See A/50/40, vol. I, annex VII, sect. A, para. 5, and sect. B, para. 7.

[72] For a summary of the Committee's procedure on follow-up, see A/49/40, vol. I, paras. 459-468. Further information, and a country-by-country breakdown regarding follow-up is contained in A/50/40, vol. I, paras. 544-565.

[73] See the reports of the Human Rights Committee (A/50/40), vols. I and II; the Committee against Torture (A/50/44); and the Committee on the Elimination of Racial Discrimination (A/50/18). See also the rules of procedure of CAT (rule 112) and CERD (rule 96).

[74] See A/49/40, vol. I, paras. 410-411.

[75] Rule 96.2.

[76] CERD article 14.6 (a).

[77] See also para. 42.

[78] Case No. 4/1991, L. K. v. the Netherlands; opinion adopted on 16 March 1993 (see A/48/18, annex IV).

[79] OP art. 5.3, CAT art. 22.6 and MWC art. 77.6.

[80] HRC rule 83, CAT rule 102 and CERD rule 97.

[81] Rules 96-99.

[82] A/50/18, para. 672.

[83] HRC rule 96.3 (b).

[84] HRC rule 96.3 (a).

[85] See CERD art. 14.8, OP art. 6 and CAT art. 24.

[86] OP art. 5.4, CAT art. 22.7, CERD art. 14.7 (b) and MWC art. 77.7.

[87] Note the proviso of CERD, paras. 42 and 73 above.

[88] HRC rules 96.3 (a) and 97.2.

[89] A/48/18, annex IV (see also para. 73 above) and A/50/18, annex VIII.

[90] CERD rule 94.5.

[91] CAT rule 110.5.

[92] CERD art. 14.7 (a).

[93] CAT art. 22.4 and MWC art. 77.5. CERD, in article 14.7 (a), has similar provisions. On the participation of the parties in the proceedings before the Committee, see para. 84.

[94] HRC rules 78 and 80, CAT rules 97 and 99 and CERD rules 82 and 84.

[95] CERD rule 95.2 and CAT rule 111.2.

[96] Case No. 13/1993, Balabou Mutombo v. Switzerland; views adopted on 27 April 1994 (see A/49/44, annex V, sect. B, para. 9.5.).

[97] HRC rule 79.2, CAT rule 98.1 and CERD rule 83.1.

[98] OP art. 6, CAT art. 24 and CERD art. 14.8.

[99] MWC, art. 74.7.

[100] HRC rule 83, CAT rule 102 and CERD rule 97.

[101] See paras. 102-107.

[102] CERD art. 8.6.

[103] In paragraph 3 of article 18, the Secretary-General of the United Nations is requested to provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention.

[104] CAT art. 20.1.

[105] CAT rule 69.

[106] CAT art. 28.1.

[107] CAT art. 28.2.

[108] CAT art. 20.2.

[109] Ibid.

[110] CAT art. 20.1.

[111] CAT arts. 20.3 and 20.5.

[112] CAT art. 20.5.

[113] CAT art. 20.5; rules 72-74, 81, 82 and 84.

[114] See A/50/44, paras. 183-188.

[115] See A/48/44/Add.1 and A/51/44, paras. 180-222; see also A/50/44, para. 188.

[116] See E/CN.4/1994/42, para. 74.

[117] See also E/CN.4/1994/42, in particular paras. 82-84.